

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FIRSTMERIT BANK, N.A., as Assignee of
the FDIC, receiver for Midwest Bank and
Trust Company,

Plaintiff,

v.

ANTIOCH BOWLING LANES, INC.,
JOSEPH STERBENZ, CHICAGO TITLE
LAND TRUST COMPANY AS SUCCESSOR
TRUSTEE TO LASALLE BANK
NATIONAL ASSOCIATION AS TRUSTEE
UNDER TRUST AGREEMENT DATED
AUGUST 16, 1991 AND KNOWN AS
TRUST NUMBER 114403-02, KENNETH
STERBENZ, MIDWEST BANK AND
TRUST COMPANY, MORNING DEW
EXTERIORS, INC.,

Defendants.

Case No. 12 C 09567

Judge Joan D. Gottschall

Property Address:
750 W. Route 173
Antioch, IL 60002

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT OF FORECLOSURE

Plaintiff, FirstMerit Bank, N.A., as assignee of the FDIC, receiver for Midwest Bank & Trust Company ("Lender"), moves for entry of a Judgment of Foreclosure and Order of Sale and in support thereof states as follows:

1. Plaintiff filed this action on November 30, 2012 alleging claims for mortgage foreclosure, breach of note, and breach of guaranty.

2. On June 26, 2013 this Court granted Plaintiff a default judgment against Defendant Chicago Title Land Trust Company as Successor Trustee to LaSalle Bank National Association as Trustee under Trust Agreement Dated August 16, 1991 and known as Trust Number 114403-02. See Exhibit A.

3. On August 6, 2013, this Court granted Plaintiff's motion for summary judgment against Defendants Antioch Bowling, Joseph Sterbenz, and Kenneth Sterbenz. See Exhibit B.

4. On November 21, 2013, this Court granted Plaintiff's motion for summary judgment against defendant Morning Dew Exteriors, Inc. See Exhibit C.

5. Plaintiff seeks to voluntarily dismiss from this action Defendant Midwest Bank & Trust Company. A proposed Order is attached hereto as Exhibit D.

6. By awarding summary judgment, this Court found Defendants Antioch Bowling and Joseph Sterbenz defaulted under the terms of the promissory note and guaranty. As established by the affidavit of Jason Schachter attached hereto as Exhibit E, there are, as of December 3, 2013, the following amounts due and owing from Defendants to Lender under the note and guaranty:

| | |
|---|-----------------------|
| Principal: | \$946,737.78 |
| Interest: | \$138,255.03 |
| Per Diem after 5/6/13: \$295.855556 | |
| Late Fees: | \$102,121.04 |
| Real Estate Taxes, Appraisal and Other Expenses: | <u>\$62,347.35</u> |
| Total: | <u>\$1,249,461.20</u> |

7. Further, pursuant to the mortgage and promissory note, and as Antioch Bowling and Joseph Sterbenz admit, Lender is entitled to recover from them its attorneys' fees, costs, and expenses incurred to enforce the terms of the mortgage and promissory note. As of December 3, 2013, Lender incurred \$67,889.00 in fees and \$1,170.65 in costs while being represented by Thompson Coburn LLP. See Exhibit F.

7. With the dismissal of Defendant Midwest Bank and Trust Company, the entry of a default judgment against Chicago Title, and the award of summary judgment against all other Defendants, no issues remain to be litigated at this stage of the foreclosure and Plaintiff seeks entry of a Judgment of Foreclosure and Order of Sale reflecting the amounts due and owing to it from Defendants in order to move forward with a judicial sale and complete this foreclosure action. A proposed Order is attached hereto as Exhibit G.

FOR RELIEF, Plaintiff, FirstMerit Bank, N.A., as successor in interest to FDIC, as receiver for Midwest Bank and Trust Company respectfully requests that this Court enter:

- a. A Judgment of Foreclosure and Order of Sale on Count I of the Complaint consistent with the attached Exhibit G;
- b. A judgment in its favor and against Antioch Bowling with an award of damages in the amount of \$1,318,520.85 on Count II of its Complaint;
- c. A judgment in its favor and against Joseph Sterbenz with an award of damages in the amount of \$1,318,520.85 on Count III of its Complaint; and
- d. Any such further relief as this Court deems appropriate.

Respectfully Submitted,

FirstMerit Bank, N.A.

By: /s/ Emily L. Peel

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